IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

National Insurance Co. Ltd. Vs. Pema & Ors.

S.B.CIVIL MISC. APPEAL NO.249/1991
Against the award dated 04.06.1991 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.299/1987

Date of Judgment : 18.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Sanjeev Johari with Ms. Meenakshi Maheshwari for the appellant.
Mr.Dilip Kawadia, for the respondents

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BY THE COURT:

The appellant, National Insurance Company Ltd. has preferred this appeal against the award dated 04.06.1991 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.299/1987 whereby the learned Tribunal has made an award in the sum of Rs.1,00,000/- in favour of the claimants on account of accidental death of Sejram, aged about 28-30 years, caused by use of a truck bearing registration No.RJD 4695 and the liability to satisfy the award has been mulcted upon the insurer. The submission of the

insurer is that the accident occurred at 2.30 p.m. on 11.03.1987 and at the time of accident, the vehicle involved in the accident was not insured with it.

Background facts are that deceased Sejram while riding his bicycle was hit by the aforesaid truck RJD 4695 near Suraj Pol, Udaipur on 11.03.1987 at 2.30 p.m. and he sustained grievous head injury that resulted in his death on 13.03.1987. The claimants, parents, wife and children of the deceased claimed compensation stating his income at Rs.1000/- per month and age at 28 years made a claim in the sum of Rs.3,72,300/-. The proceedings in the claim application were dropped against driver of the vehicle, non-applicant No.1 and the non-applicants No.2 and 3 the owners of the vehicle while submitting a joint reply stated that the vehicle was insured with the National Insurance Company Limited; that deceased was taking his bicycle in a brisk speed and turned towards centre of the road and hit against the truck and sustained injuries; that the accident was caused by the negligence of the deceased himself and not because of any fault on the part of the driver of the vehicle. While putting quantum of compensation into contention, it was alleged that if there be any liability for compensation, non-applicant No.4 insurer remains liable therefor as the vehicle was insured with it.

Non-applicant No.4, the present appellant who had been impleaded as insurer of the offending vehicle alleged that the claim application was incompetent and suffered from misjoinder of parties. The non-applicant No.4 denied its liability for compensation with the submissions that at the time of accident at 2.30 p.m. on 11.03.1987 the vehicle in question was not insured with it. The averments so taken, having direct bearing on the questions involved in the case, could be reproduced thus:

> "यह कि प्रार्थीगण मामले के तथ्यानुसार विपक्षी उत्तरदाता से किसी तरह का मुआवजा अन्तर्गत प्रावधान मोटर व्हीकल एक्ट के तहत प्राप्त करने के अधिकारी नहीं है क्योंकि वक्त दुर्घटना दिनांक 11 मार्च 1987 समय दोपहर 2-30 बजे वाहन पंजीयन संख्या आर0 जे0 डी0 4695 विपक्षी उतरदाता के यहां बीमागत नहीं था, अत: तथ्यानुसार विपक्षी उतरदाता पर प्रार्थीयों को किसी तरह का मुआवजा अदा करने के क्रम में दायित्व आयद नहीं होता हैं।"

The insurer also denied involvement of the vehicle in question in the accident and repeatedly denied the vehicle having been insured with it at the time of accident. The non-applicant No.4 also pointed out various other causes amounting to violation of policy conditions and also submitted that no information relating to the accident was received till the time of receiving of summon from the Tribunal and, therefore, a notice was also sent to the registered owner of the vehicle

on 07.07.1989 that was not replied and the relevant documents were not supplied. The Tribunal framed the following issues for determination of the questions involved in the case:-

> "1- आया दिनांक 11-3-87 को श्री सेजराम की मृत्यु वि0 नं0 1 श्री उदय लाल के द्वारा वाहन संख्या आर 0 जे0 डी0 4695 को गफलत व लापरवाही से चलाने के कारण कारित हुई ?
> 2- आया प्रार्थीगण क्लेम में बताई गई राशि रूपया 3,71,300/- या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने के अधिकारी है, यदि हाँ तो कितनी व किस किस से ?
> 3- क्या विपक्षी बीमा कम्पनी द्वारा जवाब दावे में उठाई गई आपत्तियों के आधार पर बीमा कम्पनी का कोई दायित्व नहीं हैं?
> 4- दादरसी ?"

In oral evidence, the claimants examined AW-1 Pema, claimant No.1, father of the deceased; AW-2 Nagji Ram said to be eye-witness to the accident; and AW-3 Bhanwari, claimant No.3, wife of the deceased. On the other hand, the non-applicant No.4 examined one Rakesh Suthwal as NAW-1. In documentary evidence, the claimants produced, inter alia, the FIR Ex.1 and the Post Mortem Report Ex.2; whereas the non-applicant produced, inter alia, a copy of the Report of their Investigator as Ex.D/5, a photostat of the copy of Cover Note No.820970 as Ex.D/6 and a duplicate typed copy of Certificate of Insurance as Ex.A/7.

After hearing the parties, learned Judge of the Tribunal found on issue No.1 that the accident occurred for rash and negligent driving of the truck that resulted in causing fatal injuries to the deceased Sejram. Taking up quantification of compensation in issue No.2, learned Judge of the Tribunal considered the evidence relating to the income of deceased as labourer in the range of about Rs.1000/- per month but took the dependency of the parents, wife and children of the deceased only at Rs.400/- per month; and applied a multiplier of 20 to the multiplicand of Rs.4800/- and thereby calculated Rs.96,000/- as pecuniary loss and adding Rs.4000/- on other scores found the claimants entitled to compensation in the sum of Rs.1,00,000/- and allowed them interest at the rate of 12% per annum from the date of filing of claim application.

While dealing with the question of liability of the insurer, learned Judge considered the evidence available on record and with reference to the statement of NAW-1 Rakesh Suthwal found that the said witness had been posted in the Udaipur Office of the Insurance Company only from the month of June, 1990 and, therefore, his statement was not of much help to the insurer. Learned Judge also referred to Ex.A/7 and observed that the said document was only a duplicate copy and even the carbon copy of cover note had not been filed. Learned Judge further observed that Insurance

Company cannot avoid its liability by merely referring to so-called delayed insurance because the insurance coverage becomes available from the mid-night of the date of issue of cover note. Learned Judge also observed that the non-applicant-insurer has failed to take appropriate pleadings in the reply and if they wanted to avoid their liability on the basis of document Ex.A/7, averments ought to have been taken specifically in the written statement that the vehicle owner obtained insurance at 4.00 p.m. on 11.03.1987 fraudulently after concealing the facts regarding accident. The learned Judge, therefore, held the appellant liable to satisfy the award. On issue No.3 (wrongly mentioned as issue No.4 in the award) learned Judge observed that the only ground raised by the insurer was that the vehicle in question was not insured with it and such objection having been rejected while dealing with issue No.2 and no other material objection having been raised, issue No.3 was also required to be decided against the insurer.

Learned counsel Mr.Sanjeev Johari appearing for the appellant has strenuously contended that the Tribunal has been seriously in error in deciding issues No.2 & 3 against the insurer on the assumption that the insurer has not been able to establish that contract of insurance was entered at 4.00 p.m. on 11.03.1987, the very date of accident, after accident

had occurred at 2.30 p.m. Learned counsel referred to the pleadings taken by the insurer and the evidence produced on record particularly the documents Ex.D/6 and Ex.A/7 to submit that insurer has proved on record that Insurance Cover Note was issued on 11.03.1987 at 4.00 p.m. (Ex.D/6) and policy in pursuance thereof was issued commencing from 4.00 p.m. on 11.03.1987 (Ex.A/7); and the result of proof of this fact is that the vehicle was not insured with the appellant at the time of accident at 2.30 p.m. and, therefore, liability could not have been fastened on the insurer. Learned counsel further submitted that strict rules of Evidence Act are not to be applied to the motor accidents claims cases dealt with by the Tribunal under the Motor Vehicles Act and in these proceedings when the insurer has discharged its burden of establishing the fact that insurance did commence only at 4.00 p.m. on 11.03.1987, the burden to prove the facts to the contrary and particularly the fact that insurance was available covering the liability at the time of accident was upon the insured i.e. owner of the vehicle only and the owner having failed to lead any evidence and having failed to establish any such fact, the evidence produced by the appellant remains unrebutted on record and there is no reason for discarding such evidence. Learned counsel submitted that so far commencement of insurance policy is concerned, earlier there

was some conflict of judicial opinion, however, with the authoritative pronouncements of the Hon'ble Supreme Court, the matter stands settled that when the policy mentions specific time for its purchase, then a special contract comes into being and the policy would be effective from the mentioned time. Learned counsel has referred to the decisions of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Bhagwati Devi and others: 1999 ACJ 534, National Insurance Co. Ltd. Vs. Jikubhai Nathuji Dabhi and others: 1997 ACJ 351 and J.Kalaivani and others Vs. S.Sivashankar and another: 2002 ACJ 613. Learned counsel has further referred to the decisions in United India Insurance Co. Ltd. Vs. Neela Devi and others: 2003 ACJ 586, United India Insurance Co. Ltd. Vs. Kamla Rani and others: 1997 ACJ 1081, Kewal Krishan and others Vs. Krishna Devi and others: 2001 ACJ 1029 , United India Insurance Co. Ltd. Vs. Malwa Bus Service (P) Ltd. and others: 1999 ACJ 1221 to submit that attested copy of insurance policy is admissible in evidence and cannot be ruled out of consideration.

Per contra, learned counsel Mr.Dilip Kawadia appearing for the claimants submitted that mere marking of exhibit on the document does not dispense with the requirement of its proof and so far the document Ex.D/6 is concerned, it is only a photostat of the alleged carbon copy of Insurance Cover

Note but is neither original nor carbon copy; and the document Ex.A/7 is a mere typed copy of the Insurance Certificate that is also neither original nor even a carbon copy prepared with the original and the authors and signatories of these two documents have not been examined. These documents cannot be held to have proved as per law nor have any probative value. Learned counsel has referred to the decisions in New India Assurance Co. Ltd. Vs. Mohinder Kumar Ahuja and others: 1998 ACJ 787 and Oriental Fire & Genl. Ins.Co. Ltd. Vs. Chandrawali and others: 1989 ACJ 419 and submitted that when the Insurance Company has neither produced original nor produced carbon copy of policy and witness of the Insurance Company has pointed out that carbon copy was available in the office and the Insurance Company placed reliance on a copy purported to be a true copy of the original but even such copy was not proved in accordance with law, the Tribunal was justified in rejecting the contentions of the insurer about the time of commencement of policy. Learned counsel while supporting the considerations adopted by the learned Tribunal in rejecting the plea of insurer has further made submissions for enhancement over the amount of compensation awarded by the Tribunal to the tune of Rs.1,00,000/- that in view of age of the deceased at about 30 years and his proved income of at least Rs.1000/- per

month and his having five dependents, even though claimants have not submitted any appeal or cross objections, in the interest of justice, the impugned award on its quantification of compensation deserves modification by the appellate court so that claimants are not deprived of just compensation.

Learned counsel Mr.Sanjeev Johari appearing for the appellant rejoined with the submissions that the facts proved by the appellant cannot be ignored and the insurance coverage having commenced at 4.00 p.m. on 11.03.1987, no liability could have been fastened on the appellant in relation to the accident taking place that very day but at 2.30 p.m. On the quantum of compensation, learned counsel submitted that the Tribunal has taken all the facts into consideration and has allowed just compensation and in the award made in the year 1991, the amount of award at Rs.1 lac with interest at the rate of 12% per annum cannot be said to be too low or inadequate so as to warrant any upward revision and that too when no cross objections or cross appeal have been submitted by the claimants. Learned counsel also pointed out that in compliance of the order passed by this Court on 27.08.1991 in Stay Application No.141/1991, the appellant has deposited the amount of Rs.1,00,000/- with the Tribunal and the same has been disbursed to the claimants on their furnishing solvent security for restitution and has prayed that this appeal

may be allowed and appropriate order for restitution either by way of recovery from the claimants or from the owner of the vehicle may be passed.

Having heard learned counsel for the parties, having given anxious consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that this appeal remains meritless and deserves to be dismissed.

The appellant-insurer seeks to rely on the fact that Insurance Cover Note was obtained at 4.00 p.m. on 11.03.1987 and contends that in view a special contract having been entered into between the appellant-Insurance Company and the owner of the vehicle whereby insurance coverage commenced at 4.00 p.m. only, liability in relation to the accident that occurred at 2.30 p.m. could not have been mulcted upon the insurer. The submission is lacking in fundamental foundation inasmuch as the very fact that insurance did commence from 4.00 p.m. has neither been specifically pleaded nor been proved on record by the appellant-insurer.

So far the document Ex.A/7 is concerned, the same has no probative value at all inasmuch as it is neither original nor even a copy prepared alongwith the original in the same process whether mechanical or manual. It is merely a typed

copy stated to be a duplicate and carries an endorsement by some person, whose name and designation are not spelt out, of it being a true copy. Neither the person preparing or attesting this true copy has been produced in evidence nor original or a copy prepared alongwith the original has been produced on record This document Ex.A/7 is of no consequence and of no help to the cause of the appellant.

So far document Ex.D/6 is concerned, it is a photostat of carbon copy of triplicate of Insurance Cover Note. Neither the so-called 'triplicate' has been produced on record nor the appellant ever took any botheration to get the original produced. This document further even does not carry the endorsement by any person of it being a true and correct copy. This document, equally, has no evidentary value and could least be taken to be a proof of the material fact that there were a special contract for the insurance coverage commencing only at 4.00 p.m. on 11.03.1987.

Submission of Mr.Sajeev Johari learned counsel for the appellant that strict rules of evidence are not to be insisted upon cannot be over-stretched and applied in the manner that even the basic rules for proof of a document may be ignored altogether. The decisions relied upon by Mr.Johari are of little help in this case. In the case of Neela Devi (supra) insurance policy had been placed on record that was treated

to be binding on the parties and the Tribunal proceeded to ignore the policy for want of proof. In the present case, the policy has never been placed before the Tribunal. Similarly, the ratio in Kamla Rani (supra) laid down by the Full Bench of Punjab and Haryana High Court treating a certified copy of the insurance policy admissible in evidence without any formal proof, also cannot be applied to the facts of the present case where neither certified policy has been produced nor even carbon copy of the insurance policy or the insurance cover note has been produced.

No reason, cause or justification is forthcoming on record as to why the appellant Insurance Company, when defending such a case where apparently its plea was indicative of some facts having been misrepresented or fraud having been played by obtaining insurance within two hours after the accident, was not coming forward to prove the simple facts about time of purchase of insurance cover by clear and direct evidence that was obviously in their own power and possession. This is apart from the fact that in the entire trial of the claim case, the appellant-insurer has never bothered to get summoned the relevant documents from the owners of the vehicle and the fact remains that the owners of the vehicle were not ex parte but were being represented regularly and all through before the Tribunal. The document

Ex.D/6 has been produced only on 06.05.1991, that is the date when a worthless witness NAW-1 Rakesh Suthwal was examined on behalf of the appellant and yet this document was not even put to the owners of the vehicle for obtaining their admission or denial.

That the appellant Insurance Company has chosen to withhold the relevant and material evidence and witnesses from the Tribunal is apparent from a bare look at the statement of NAW-1 Rakesh Suthwal who is said to be AAO with the appellant Insurance Company (that has been clarified to stand for 'Assistant Administrative Officer' during the course of submissions by Mr.Sanjeev Johari). The said witness has admitted that he had been posted with the concerned office of the appellant only from the month of June, 1990. He had no knowledge and no concern whatsoever with any of the document in relation to this case. It is inexplicable as to why such an absolutely unconcerned person was produced in evidence by the appellant and as to why the relevant persons were not produced as witnesses before the Tribunal?

The statement of NAW-1 Rakesh Suthwal is of no help to the appellant and rather it has adverse impact on their case. The said witness has of course got marked exhibit the documents but then, in his cross-examination in relation to the document Ex.A/7 has admitted that the said document was

not the original nor even the carbon copy of original and has admitted that the carbon copy of original has not been produced. It has been clearly admitted by the said witness in his evidence that he was not aware of the person issuing cover note and that no enquiry was made against the person issuing cover note in the following words:-

> "कवर नोट किसने काटा पता नहीं । कवर नोट काटने वाले के खिलाफ हमने कोई जांच नहीं की ।"

It is apparent on the face of record that the appellant insurer has dealt with this matter in a most casual and perfunctory manner and has chosen not to prove the essential facts before the Tribunal by way of relevant and convincing evidence. The submissions of Mr.Sanjeev Johari for relaxing the rules of evidence cannot be taken to such an illogical extent that when even secondary evidence is not produced by the insurer, yet, whatever document is thrown on record by the insurer may be accepted as gospel truth. This Court is of opinion that in view of the facts sought to be asserted, the onus was heavy upon the appellant to have established by cogent evidence that there was a special contract entered into between the appellant and the owners of the vehicle whereby it was agreed that the insurance would commence only from 4.00 p.m. on 11.03.1987 and not before. Such fact having not been established, the submissions of Mr. Johari for not

fastening liability on the Insurance Company cannot be countenanced. In fact, in the present case an adverse inference is required to be drawn against the appellant-insurer for withholding relevant and material evidence in the form of relevant documents and so also the relevant persons concerned with the documents of insurance cover note and policy.

The observations made by learned Judge of the Tribunal that the Insurance Company has failed to take relevant specific plea in their reply also cannot be said to be erroneous. The plea taken by the appellant has been reproduced hereinbefore and it is at once apparent that the appellant chose to take guarded and imperfect pleadings in relation to the material facts and did not state a single word in the entire reply that the questioned insurance did commence only from 4.00 p.m. on 11.03.1987 and not before. Want of such specific pleadings has a material bearing on this case inasmuch as such fact alone has been put forward by the appellant to avoid its liability. Though strict rules of pleadings are not applicable to the motor accidents claims cases, however, this Court is clearly of opinion that certain particulars remain fundamental that are required to be pleaded in relation to particular state of facts.

It may be pointed out that Rule 10 of Order 6 CPC envisages that wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred and this much is obvious that the fact is required to be alleged regarding fraudulent intention, knowledge or other condition of the mind. Therefore, unless the malice, fraudulent intention or knowledge has been alleged, it cannot be accepted that relevant facts have been pleaded. Moreover under Rule 9 of Order 6 CPC where the contents of any document are material, it would be sufficient in pleading to state the effect thereof without setting out the whole or any part of the document unless the precise words of the document or any part thereof are material. Rule 8 of Order 6 and so also Rule 4 of Order 6 of the Code of Civil Procedure are indicative of the basic requirement of pleadings that wherever particulars are necessary in relation to a contract; and more particularly when the legality or sufficiency of a contract is sought to be questioned or when precise items are the foundation of the case of a party on the nature and effect of the contract, such particulars are definitely required to be pleaded. Such pleadings form the basis for proof of fact during the course of enquiry by court or tribunal on a

particular issue requiring determination. In the present case, precise words in the document that the policy commenced from 4.00 p.m. were not only material but were the foundation of the very defence sought to be suggested by the insurer. Want of such basics in the pleadings cannot be ignored as irrelevant. Want of such precise pleading assumes importance in this case because the vehicle got involved in accident at 2.30 p.m., the driver left the same and the vehicle was detained in the police station. If insurance cover was obtained at 4.00 p.m., that was issued without examining the vehicle. It was, therefore, very material to allege fraud or misrepresentation, if there were any.

The insurer having chosen not to take even basic essential pleadings does not appear to be justified in claiming that with reference to the documents Ex.D/6 and Ex.A/7 it be taken proved that the insurance did commence from 4.00 p.m. on the fateful day. Having examined the considerations adopted by the learned Judge of the Tribunal, this Court is satisfied that although the learned Judge has not referred to the document Ex.D/6, however, in the ultimate analysis the conclusion reached by the learned Judge of the Tribunal remains justified and the learned Judge has not committed any error in holding the appellant liable. Once the fact that the insurance did commence from 4.00 p.m. on the relevant date

is not established and otherwise the fact is not in dispute that policy was issued operative from 11.03.1987 to 10.03.1988, the insurer does remain liable. In this view of the matter, this appeal turns out to be bereft of substance and is required to be dismissed.

So far submission of Mr.Dilip Kawadia learned counsel appearing for the claimants for enhancement of amount of compensation is concerned, apart from the fact that no cross objection or cross appeal have been submitted by the claimants, having examined the award in its totality and the evidence led by the claimants, this Court is satisfied that the award, though on lower side, cannot be said to be too low or grossly inadequate so as to warrant interference by the appellate court and it does not appear appropriate a case where award calls for upward revision. Submissions of Mr.Dilip Kawadia, therefore, cannot be accepted.

In the result, this appeal fails and is dismissed. In the circumstances of the case, parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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